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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 CHRISTOPHER LEE DUNN,

Case No. BC 417928

16 Plaintiff,

17 v.

18 BURBANK POLICE DEPARTMENT,
CITY OF BURBANK, and DOES 1
19 Through 100, Inclusive,

20 Defendants.
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**THE CITY OF BURBANK'S CORRECTED
SEPARATE STATEMENT IN SUPPORT OF
DEFENDANT CITY OF BURBANK'S
MOTION FOR SUMMARY JUDGMENT,
OR IN THE ALTERNATIVE, SUMMARY
ADJUDICATION**

**Date: March 3, 2010
Time: 8:30 a.m.
Dept.: 31**

MOVING PARTY'S UNDISPUTED
MATERIAL FACT AND SUPPORTING
EVIDENCE

OPPOSING PARTIES' RESPONSE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

ISSUE 1—There is no dispute of material fact that the City is entitled to judgment on the first cause of action for Discrimination in Violation of *Government Code* § 12940(a) and (c) because plaintiff Christopher Dunn (“Dunn”) cannot produce a triable issue of material fact that the City’s reasons for his termination are false or a pretext, and because plaintiff’s claims are barred by failure to exhaust administrative remedies, immunity, or the statute of limitations.

1. Plaintiff Christopher Dunn (“Dunn”) is a former officer of the Burbank Police Department (“BPD”), who is allegedly half Japanese. [Plaintiff’s First Amended Complaint, filed July 24, 2009 (“FAC”) ¶ 1; Declaration of Kristin A. Pelletier (“Pelletier Decl.”), Ex. GG, pp. 56:21- 57:7.]

1.

2. Dunn worked Patrol at BPD from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19-23.]

2.

3. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-13.]

3.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>4. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and 42:23- 43:22.]</p>	4.
<p>5. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD."¹ [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]</p>	5.
<p>6. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Declaration of Micheal Webb ("Webb Decl."), Ex. G, p. 1.]</p>	6.
<p>7. JW implicated GD as a drug dealer who sells pounds of drugs. CCPD Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Declaration of Charles Koffman ("Koffman Decl."), ¶¶ 3-4, Webb Decl., Ex. G, p. 1;</p>	7.

¹ Privileges with respect to the identities of their respective informants are held by Burbank and Culver City. Because Culver City does not wish to waive its privilege, the City will identify both of the informants by initials only.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Pelletier Decl. Ex. GG, pp. 91:11-92:1; Declaration of Victor Lewandowski ("Lewandowski Decl."), Ex. A, p. 6.]</p>	
<p>8. LA CLEAR called Dunn at 1:59 p.m. on March 11, 2007.² [Declaration of Gerardo Misquezu ("Misquezu Decl."), Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	8.
<p>9. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misquezu Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]</p>	9.
<p>10. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i>, to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in</p>	10.

² The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misquez' Declaration.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]	
11. According to Det. Koffman, he asked Dunn during their phone conversation if Dunn wanted him to not arrest GD, and Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]	11.
12. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.] ³	12.
13. Dunn next called his supervisor, Sgt. Jose Duran, at 2:12 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p.	13.

³ Dunn disputes his response to Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]	
14. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]	14.
15. Meanwhile, Det. Koffman called his supervisor, Sgt. Webb, as he was concerned that Dunn's request not to proceed against GD might be illegal. [Koffman Decl., ¶¶ 5- 6; Webb Decl., Ex. G, pp. 1-2.]	15.
16. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	16.
17. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	17.
18. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include	18.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the area code. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]	
19. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misquez Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶ 7, Ex. H.]	19.
20. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	20.
21. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1; Webb Decl., Ex. G, p. 2.]	21.
22. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of	22.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
these calls lasted two minutes. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl., ¶ 7, Ex. H.]	
23. Dunn's supervisor, Sgt. Duran, told Sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and could offer no explanation for why he would do so. [Lewandowski Decl., Ex. A, p. 8.]	23.
24. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misquez Decl., Ex. EE, p. 5; Declaration of Timothy Stehr ("Stehr Decl."), Ex. U, p. 3.]	24.
25. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]	25.
26. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during her March 11, 2007	26.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>call with GD, GD told Mercado that:</p> <p>"Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e) the other agency did not care that GD was a BPD informant and was coming after her. GD also told Mercado that she knew who the subject was from Dunn's description. [Misquez Decl., Exs, X, Y, pp. 1-4.]</p>	
<p>27. Later that day, at 5:22 p.m., unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misquez Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]</p>	<p>27.</p>
<p>28. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was</p>	<p>28.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
"out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]	
29. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Decl., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]	29.
30. According to Det. Koffman, JW told him that it was the first time in his 3-4 years as a customer of GD's that she had not sold to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]	30.
31. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski, Decl., Ex. A, pp. 5-6.]	31.
32. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]	32.
33. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misqueze Decl., Ex. W, pp. 1, 4;	33.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]	
34. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misquezi Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]	34.
35. GD would later admit to CCPD detectives that she flushed her supply of narcotics following the calls from Dunn and JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	35.
36. GD called Mercado at 5:29 p.m.. on March 11, 2007. [Misquezi Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	36.
37. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and	37.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
release on March 11, 2007. [Misquez Decl., Exs., X, Y, pp. 4-6.]	
38. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p. 3.]	38.
39. According to Sgt. Webb, upon being detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]	39.
40. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p.	40.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
3, Ex. H.]	
41. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]	41.
42. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn called her on Sunday, March 11 to warn her that another police agency was looking at her. [Webb Decl., ¶ 8(c), Ex. G, p. 5, 6, 7-8.]	42.
43. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn had previously told her on several occasions that her name was in a police database, so if another jurisdiction was looking at her, Dunn would be notified [Webb Decl., ¶ 8(c), Ex. G, p. 5.]	43.
44. During her March 16, 2007 interview with CCPD, GD told CCPD that she called Dunn on Tuesday or Wednesday	44.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
(March 13 of March 14) to see if he wanted to monitor a buy she was planning with a drug dealer Dunn was targeting, that Dunn told her he was too tired and to go ahead with the buy without being monitored, and that the drugs recovered at her house on March 16 were what was left from that purchase. [Webb Decl., ¶ 8(e), Ex. G, pp. 6-7.]	
45. After GD's arrest, Det. Koffman made a "ruse" phone call to Dunn and told him that CCPD was just then preparing to serve a warrant on GD. [Webb Decl., Ex. G, p. 8.]	45.
46. Then Det. Koffman notified LA CLEAR, which also notified Dunn. [Webb Decl., Ex. G, p. 8.]	46.
47. Following the LA CLEAR notifications, CCPD had GD make a recorded call to Dunn from her cell phone. Dunn answered the call and told GD he would call her back in an hour. [Webb Decl., Ex. G, p. 8, Ex. J, p. 1.]	47.
48. Seven minutes later, Dunn called back from a "Blocked Number." GD told	48.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Dunn that she had purchased drugs from the dealer Dunn was targeting and still had "quite a bit." She also said that she had gotten another call from JW and asked if everything was okay. [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	
<p>49. Dunn told GD, "I don't know those guys, if you have, I don't know what's going on, you know what I mean. If anything is going on then you need to be careful." [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	<p>49.</p>
<p>50. The following exchange also took place: Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?" GD: Uh oh, in other words, clean up, right?" Dunn: Yes. [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	<p>50.</p>
<p>51. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was</p>	<p>51.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
investigating him. [Pelletier Decl., Ex. HH, pp. 326:22- 327:19.]	
52. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God." He also admitted that he had called to warn GD, but claimed that doing so was part of his job. [Misqueze Decl., Exs. X-Y, pp. 15-16.]	52.
53. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that, during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misqueze Decl., Exs., X, Y, pp. 16- 17.]	53.
54. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misqueze Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and Ex. 202 thereto.]	54.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>55. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr Decl., ¶ 3; Misqueze Decl., Ex. EE, p. 6.]</p>	<p>55.</p>
<p>56. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the investigation, it would not count as a discussion. [Misqueze Decl., Ex. EE, p. 6; Pelletier Decl., Ex. HH, pp. 255:3-259:8.]</p>	<p>56.</p>
<p>57. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]</p>	<p>57.</p>
<p>58. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misqueze Decl., Exs. X, Y, pp. 17-18.]</p>	<p>58.</p>
<p>59. In her April 18, 2007 interview,</p>	<p>59.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended.</p> <p>[Misquez Decl., Ex. X, Y, pp. 17-18.]</p>	
<p>60. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD.</p> <p>[Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and ex. 201 thereto.]</p>	60.
<p>61. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and Ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]</p>	61.
<p>62. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]</p>	62.
<p>63. In a letter dated May 8, 2007, then-Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶</p>	63.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
4, Ex. Q.]	
64. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	64.
65. Sgt. Victor Lewandowski of the Los Angeles County Sheriff's Department ("LASD") conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the Los Angeles County District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	65.
66. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case against Dunn was strong and that Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	66.
67. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative	67.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
investigation of Dunn. [Misquez Decl., Ex. EE, p. 8.]	
68. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	68.
69. BPD's internal affairs investigation of Dunn was completed on March 6, 2008. by Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	69.
70. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief	70.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]	
71. The Brady letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]	71.
72. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]	72.
73. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as his testimony could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20.]	73.
74. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).]	74.
75. Dunn was terminated because, among other things cited in his Notice of	75.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]</p>	
<p>76. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police Officers' Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]</p>	76.
<p>77. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ-KK.]</p>	77.
<p>78. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶</p>	78.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
8, Ex. U, pp. 20-21; Misqueze Decl., ¶ 9.]	
79. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office, reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	79.
80. Dunn has no evidence that Sgt. Misqueze reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11-324:8; 325:17-326:3; 329:25-332:16.]	80.
81. Both the person who conducted the investigation of Dunn (Sgt. Misqueze) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misqueze Decl., ¶ 9.]	81.
82. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and Ex. 203(B) thereto.]	82.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
83. Dunn filed his government tort claim with the City of Burbank on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	83.
84. Dunn filed this action on July 16, 2009. [FAC, p. 1.]	84.
<u>ISSUE 2</u>—There is no dispute of material fact that the City is entitled to judgment on the second cause of action for Harassment in Violation of <i>Government Code</i> § 12940(a) and (j) because the subject actions are barred by the statute of limitations, because the alleged harassment was neither severe nor pervasive as a matter of law, and because plaintiff did not complain to the City about any alleged harassment.	
85. Dunn is a former officer of the Burbank Police Department (“BPD”), who is allegedly half Japanese. [FAC ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]	85.
86. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19- 23.]	86.
87. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes.	87.

1	MOVING PARTY'S UNDISPUTED	OPPOSING PARTIES' RESPONSE IN
2	MATERIAL FACT AND SUPPORTING	SUPPORT OF MOTION FOR SUMMARY
3	EVIDENCE	JUDGMENT
4	[Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-	
5	13.]	
6	88. In approximately July 2006, Dunn was	88.
7	promoted to the rank of detective and	
8	transferred into the Vice/Narcotics Unit.	
9	[Pelletier Decl., Ex. GG, pp. 36:20-37:6 and	
10	42:23- 43:22.]	
11	89. Dunn testified at deposition that he	89.
12	heard racial comments from Officer Sam	
13	Anderson, Sgt. Dan Yadon, Officer Chris	
14	Racina, and Officer Claudio Losaco.	
15	[Pelletier Decl., Ex. GG, pp. 134:8- 135:5.]	
16	90. On one occasion, a month or two	90.
17	before April 2007, Dunn says that Officer	
18	Sam Anderson at an SRT (Special Response	
19	Team) training said, "You're going to be	
20	beat like WWII because you know we beat	
21	the Japs." [Pelletier Decl., Ex. GG, pp. 130:	
22	3-131:7.]	
23	91. Dunn also claimed that Anderson, on	91.
24	more than one occasion used "Jap" or "Nip"	
25	in talking about Dunn or his heritage, and	
26	used the terms "gooks", "Charlie" or "fish	
27	heads" in talking about Asians generally.	
28	[Pelletier Decl., Ex. GG, pp. 135:1-137:5.]	

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
92. Anderson made these alleged comments while working with Dunn on Patrol from 2001-2003, while they were on SRT together, and while the two were friendly. [Pelletier Decl., Ex. GG, pp. 130:3-22, 135:16-136:7; Pelletier Decl. Ex. HH, pp. 184:3-185:20.]	92.
93. SRT was an extra assignment in addition to Dunn's regular job at SED or Narcotics, with occasional training sessions. [Pelletier Decl., Ex. GG, pp. 19:16-25, 25:14-19, 43:18-22.]	93.
94. Dunn did not report any of Anderson's comments to a supervisor, nor did he say anything about this to Anderson, despite being friendly with him. [Pelletier Decl., Ex. GG, pp. 135:1-4; 137:23-25, Ex. HH, pp. 184:3-185:20.]	94.
95. Dunn also identified comments made by Sgt. Dan Yadon. According to Dunn, when Yadon was being teased about almost hitting a woman in a crosswalk, Yadon said "Well its not my fault. She's Asian. She could barely see at night." and "Right Dunn. You can see right?" This was in	95.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
2005 or 2006. [Pelletier Decl., Ex. GG, pp. 157:4-21, 158:10-13.]	
96. Dunn also says that in discussing a Chinese restaurant Sgt., Yadon asked "What you don't like your people's food?" and when told Dunn was Japanese said "Well, its all the same." [Pelletier Decl., Ex. GG, pp. 155:20-156:7.]	96.
97. Dunn additionally said that, on one occasion while Dunn was in SED and before July 2006, Yadon also imitated a famous line—"Me love you long time"—of an Asian character from the movie "Full Metal Jacket" using the Asian character's accent. [Pelletier Decl., Ex. GG, pp. 159:9-24.]	97.
98. Dunn testified that, in 2006, Officer Chris Racina told him, "You know, there's only been three Asian... detectives that worked narcotics. One of them became a transvestite. The other one went insane." Dunn understood that he was the third one. [Pelletier Decl., Ex. GG, pp. 162:8-163:1.]	98.
99. Dunn identified Officer Claudio Losacco as saying in 2003 that he did not like Dunn because he had come over from	99.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the LAPD. [Pelletier Decl., Ex. A, pp. 146:19-147:17 and 149:23-150:4.]	
100. Dunn also claimed that Officer Losacco mimicked accents of blacks and Armenians, but not of Dunn or Asians generally. [Pelletier Decl., Ex. GG, pp. 150:5-152:6.]	100.
101. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. All of the race based comments Dunn supposedly heard occurred before he was put on administrative leave on April 18, 2007, over two years before he filed his DFEH Charge. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto, and p. 129:4-24); Stehr Decl., ¶ 4, Ex. P.]	101.
102. Dunn never made a complaint against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13.]	102.
103. Dunn testified that on one occasion he raised with Sgt. Murphy a dispute between Dunn and Sgt. Yadon about workload and	103.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
sharing of duties among team members, without raising racial concerns. [Pelletier Decl., Ex. GG, pp. 139:10-142:10.]	
104. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	104.
105. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4- 69:24, and Ex. 203(B) thereto.]	105.
106. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	106.
107. Dunn filed the instant action on July 16, 2009. [FAC, p. 1.]	107.

MOVING PARTY'S UNDISPUTED
MATERIAL FACT AND SUPPORTING
EVIDENCE

OPPOSING PARTIES' RESPONSE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

ISSUE 3—There is no dispute of material fact that the City is entitled to judgment on the third cause of action for Retaliation in Violation of *Government Code* § 12940(h) because plaintiff cannot produce a triable issue of material fact that the City's reasons for his termination are false or a pretext, because plaintiff's claims are barred by failure to exhaust administrative remedies, immunity, or the statute of limitations, because plaintiff did not engage in any statutorily protected conduct, and because there is no nexus between any such claimed conduct and the asserted retaliatory acts by the City.

108. Dunn is a former officer of the Burbank Police Department ("BPD"), who is allegedly half Japanese. [FAC ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]

108.

109. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19-23.]

109.

110. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8-13.]

110.

111. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and

111.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
42:23- 43:22.]	
112. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD." [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]	112.
113. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Webb Decl., Ex. G, p. 1.]	113.
114. JW implicated GD as a drug dealer who sells pounds of drugs. CCPD Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Koffman Decl., ¶¶ 3-4, Webb Decl., Ex. G, p. 1; Pelletier Decl. Ex. GG, pp. 91:11-92:1; Declaration of Victor Lewandowski ("Lewandowski Decl."), Ex. A, p. 6.]	114.
115. LA CLEAR called Dunn at 1:59 p.m. on March 11, 2007. ⁵ [Misquezt Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman	115.

⁵ The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misquez' Declaration.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Decl., Ex. K, p. 1.]	
116. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]	116.
117. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i> , to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]	117.
118. According to Det. Koffman, he asked Dunn during their phone conversation	118.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>if Dunn wanted him to not arrest GD, and Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]</p>	
<p>119. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]⁶</p>	119.
<p>120. Dunn next called his supervisor, Sgt. Jose Duran, at 2:12 p.m.. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]</p>	120.
<p>121. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]</p>	121.
<p>122. Meanwhile, Det. Koffman called</p>	122.

⁶ Dunn disputes his response to Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>his supervisor, Sgt. Webb, as he was concerned that Dunn's request not to proceed against GD might be illegal. [Koffman Decl., ¶¶ 5-6; Webb Decl., Ex. G, pp. 1-2.]</p>	
<p>123. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	123.
<p>124. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]</p>	124.
<p>125. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include the area code. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]</p>	125.
<p>126. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A,</p>	126.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶ 7, Ex. H.]	
127. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misque Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	127.
128. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misque Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex., K, p. 1; Webb Decl., Ex. G, p. 2.]	128.
129. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of these calls lasted two minutes. [Misque Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl. ¶ 7, Ex. H.]	129.
130. Dunn's supervisor, Sgt. Duran, told Sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and	130.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
could offer no explanation for why he would do so. [Lewandowski Decl., Ex. A, p. 8.]	
131. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misquez Decl., Ex. EE, p. 5; Stehr Decl., Ex. U, p. 3.]	131.
132. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]	132.
133. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD told Mercado that: "Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e) the other agency did not care that GD	133.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>was a BPD informant and was coming after her. GD also told Mercado that she knew who the subject was from Dunn's description. [Misquez Decl., Exs. X, Y, pp. 1-4.]</p>	
<p>134. Later that day, at 5:22 p.m., completely unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misquez Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]</p>	134.
<p>135. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was "out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]</p>	135.
<p>136. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Dec., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]</p>	136.
<p>137. According to Det. Koffman, JW told him that it was the first time in his 3-4</p>	137.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
years as a customer of GD's that she had not sold to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]	
138. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski, Decl., Ex. A, pp. 5-6.]	138.
139. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]	139.
140. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misqueze Decl., Ex. W, pp. 1, 4; Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]	140.
141. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misqueze Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]	141.
142. GD would later admit to CCPD detectives that she flushed her supply of	142.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
narcotics following the calls from Dunn and JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	
143. GD called Mercado at 5:29 p.m.. on March 11, 2007. [Misqueze Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	143.
144. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and release on March 11, 2007. [Misqueze Decl., Exs., X, Y, pp. 4-6.]	144.
145. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p. 3.]	145.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
146. According to Sgt. Webb, upon being detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]	146.
147. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p. 3, Ex. H.]	147.
148. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]	148.
149. During her March 16, 2007	149.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
interview with CCPD , GD told CCPD that Dunn called her on Sunday, March 11 to warn her that another police agency was looking at her. [Webb Decl., ¶ 8(c), Ex. G, p. 5, 6, 7-8.]	
150. During her March 16, 2007 interview with CCPD, GD told CCPD that Dunn had previously told her on several occasions that her name was in a police database, so if another jurisdiction was looking at her, Dunn would be notified [Webb Decl., ¶ 8(c), Ex. G, p. 5.]	150.
151. During her March 16, 2007 interview with CCPD , GD told CCPD that she called Dunn on Tuesday or Wednesday (March 13 of March 14) to see if he wanted to monitor a buy she was planning with a drug dealer Dunn was targeting, that Dunn told her he was too tired and to go ahead with the buy without being monitored, and that the drugs recovered at her house on March 16 were what was left from that purchase. [Webb Decl., ¶ 8(e), Ex. G, pp. 6-7.]	151.
152. After GD's arrest, Det. Koffman made a "ruse" phone call to Dunn and told	152.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
him that CCPD was just then preparing to serve a warrant on GD. [Webb Decl., Ex. G, p. 8.]	
153. Then Det. Koffman notified LA CLEAR, which also notified Dunn. [Webb Decl., Ex. G, p. 8.]	153.
154. Following the LA CLEAR notifications, CCPD had GD make a recorded call to Dunn from her cell phone. Dunn answered the call and told GD he would call her back in an hour. [Webb Decl., Ex. G, p. 8, Ex. J, p. 1.]	154.
155. Seven minutes later, Dunn called back from a "Blocked Number." GD told Dunn that she had purchased drugs from the dealer Dunn was targeting and still had "quite a bit." She also said that she had gotten another call from JW, and asked if everything was okay. . [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2).]	155.
156. Dunn told GD, "I don't know those guys, if you have, I don't know what's going on, you know what I mean. If anything is going on then you need to be careful." [Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	156.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>157. The following exchange also took place:</p> <p>Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?"</p> <p>GD: Uh oh, in other words, clean up, right?"</p> <p>Dunn: Yes.</p> <p>[Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	157.
<p>158. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was investigating him. [Pelletier Decl., Ex. HH, pp. 326:22-327:19.]</p>	158.
<p>159. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God," and to admit that he had called to warn GD, but claimed that doing so was part of his job. [Misqueza Decl., Exs. X-Y, pp. 15-16.]</p>	159.
<p>160. In a recorded interview with BPD on</p>	160.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>April 18, 2007, Mercado told BPD that, during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misquez Decl., Exs., X, Y, pp. 16-17.]</p>	
<p>161. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misquez Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and Ex. 202 thereto.]</p>	161.
<p>162. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]</p>	162.
<p>163. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the investigation, it would not count as a</p>	163.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
discussion. [Misquez Decl., Ex. EE, p. 6; Pelletier Decl., Ex. HH, pp. 255:3-259:8.]	
164. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]	164.
165. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misquez Decl., Exs. X, Y, pp. 17-18.]	165.
166. In her April 18, 2007 interview, Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended. [Misquez Decl., Ex. X, Y, pp. 17-18.]	166.
167. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and Ex. 201 thereto.]	167.
168. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a	168.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]	
169. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misqueze Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]	169.
170. In a letter dated May 8, 2007, then- Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]	170.
171. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misqueze Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	171.
172. Sgt. Victor Lewandowski of the Los Angeles County Sheriff's Department conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the Los	172.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Angeles County District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	
173. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case against Dunn was strong and Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	173.
174. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative investigation of Dunn. [Misqueze Decl., Ex. EE, p. 8.]	174.
175. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misqueze Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	175.
176. BPD's internal affairs investigation of	176.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Dunn was completed on March 6, 2008. by Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	
177. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]	177.
178. The Brady letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]	178.
179. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending	179.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]	
180. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as it could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20.]	180.
181. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).]	181.
182. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12- 19.]	182.
183. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of	183.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Understanding between the City of Burbank and the Burbank Police Officers' Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
184. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ-KK.]	184.
185. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquezt Decl., ¶ 9.]	185.
186. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office, reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	186.
187. Dunn has no evidence that Sgt. Misquezt reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11-	187.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
324:8; 325:17-326:3; 329:25-332:16.]	
188. Dunn never made any complaints against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13.]	188.
189. Both the person who conducted the investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]	189.
190. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and Ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4- 69:24, and Ex. 203(B) thereto.]	190.
191. Dunn filed his government tort claim with the City of Burbank on May 28, 2009. [FAC ¶ 19, and Ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	191.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
192. Dunn filed the instant action on July 16, 2009. [FAC, p. 1.]	192.
ISSUE 4—There is no dispute of material fact that the City is entitled to judgment on the fourth cause of action for Failure to Take Steps to Prevent Discrimination and Harassment in Violation of <i>Government Code</i> § 12940(j)(1), and (k) because plaintiff cannot produce a triable issue of fact to support a claim for discrimination, harassment, or retaliation.	
193. Dunn is a former officer of the Burbank Police Department ("BPD"), who is allegedly half Japanese. [FAC, ¶ 1; Pelletier Decl., Ex. GG, pp. 56:21- 57:7.]	193.
194. Dunn worked Patrol from 2001 to 2003. [Pelletier Decl., Ex. GG, p. 135:19- 23.]	194.
195. In November of 2003, Dunn was assigned to the Special Enforcement Detail of the BPD. This was a specialized unit that supported the investigation division of the BPD in the investigation of various crimes. [Pelletier Decl., Ex. GG, pp. 28:3-7, 36:8- 13.]	195.
196. In approximately July 2006, Dunn was promoted to the rank of detective and transferred into the Vice/Narcotics Unit. [Pelletier Decl., Ex. GG, pp. 36:20-37:6 and	196.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
42:23- 43:22.]	
197. In his work as a detective in Vice/Narcotics, Dunn became the handler for an informant for the BPD, "GD." [Pelletier Decl., Ex. GG, pp. 208:4-209:15.]	197.
198. On March 11, 2007, the Culver City Police Department ("CCPD") arrested an entertainer by the name of "JW" for drug possession. [Webb Decl., Ex. G, p. 1.]	198.
199. JW implicated GD as a drug dealer who sells pounds of drugs. Culver City Detective Charles Koffman began an investigation of GD. He ran GD's name through LA CLEAR, a multi-jurisdictional law enforcement database, where GD was registered as an informant for Dunn at BPD. [Koffman Decl., ¶¶ 3-4, Webb Decl., Ex. G, p. 1; Pelletier Decl. Ex. GG, pp. 91:11-92:1; Lewandowski Decl., Ex. A, p. 6.]	199.
200. LA CLEAR called Dunn at 1:59 p.m. ⁸ [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, p. 13, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	200.

⁸ The best summary of calls for the Court's easy reference is at Exhibit W to Sgt. Misquez' Declaration.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>201. Dunn, who was at a park at a family picnic, checked his messages at 2:03 p.m., then called Det. Koffman at 2:04 p.m. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 13-14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 92:2-18.]</p>	<p>201.</p>
<p>202. Det. Koffman explained to Dunn that CCPD was preparing to conduct a "controlled buy" involving GD (<i>i.e.</i>, to have their informant purchase drugs from GD while they monitored the transaction). According to Det. Koffman, he discussed some of the details of the operation with Dunn, including that the informant was in the entertainment business, was male, had purchased a significant amount of narcotics from GD the night before, and claimed to have seen substantially more in GD's possession. [Koffman Decl., ¶¶ 4-5; Webb Decl., Ex. G, pp. 1-2; Pelletier Decl., Ex. GG, pp. 93:18-94:25, 100:16-102:11.]</p>	<p>202.</p>
<p>203. According to Det. Koffman, he asked Dunn during their phone conversation if Dunn wanted him to not arrest GD, and</p>	<p>203.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Dunn replied "No I wish you wouldn't." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.]	
204. Det. Koffman says he next said "Let me get this straight. You know your informant is selling narcotics and you don't want me to arrest her" to which Dunn responded "Yes." [Koffman Decl., ¶ 5; Webb Decl., Ex. G, p. 2.] ⁹	204.
205. Dunn next called his supervisor Sgt. Jose Duran at 2:12 p.m.. [Misquez Decl., Ex. W (Call Timeline), pp. 1, 2; Lewandowski Decl., Ex. A, pp. 14, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1; Pelletier Decl., Ex. GG, p. 105:20-106:1.]	205.
206. Dunn told Sgt. Duran about CCPD's investigation of GD. Sgt. Duran told Dunn to tell CCPD that if they had information that GD was dealing drugs, they should proceed with their investigation. [Pelletier Decl., Ex. HH, 261:4-262:4.]	206.
207. Meanwhile, Det. Koffman called his supervisor, Sgt. Webb, as he was	207.

⁹ Dunn disputes this portion of his conversation with Det. Koffman. However, that is beside the point for purposes of this Motion. Here, what matters is what Det. Koffman told the BPD about Dunn, as it relates to the BPD's motive to terminate Dunn's employment.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
concerned that Dunn's request not to proceed against GD might be illegal. [Koffman Decl., ¶¶ 5-6; Webb Decl., Ex. G, pp. 1-2.]	
208. Sgt. Webb called Dunn at 2:17 and 2:18 p.m., but had to leave a voicemail message. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	208.
209. Immediately after talking to Sgt. Duran, Dunn called GD at 2:15 p.m., but the call did not connect. [Misqueze Decl., Ex. W, pp. 1-2; Lewandowski Decl., Ex. A, p. 15, Ex. B, p. 1; Koffman Decl., Ex. K, p. 1.]	209.
210. At 2:16 p.m., Dunn called GD using his father's cell phone, but did not include the area code. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 14, Ex. C, p. 1; Koffman Decl., Ex. L, p. 1.]	210.
211. At 2:17 p.m., Dunn called GD with the full number on his father's phone. According to the phone records, that call lasted for three minutes. [Misqueze Decl., Ex. W, pp. 1-2, Lewandowski Decl., Ex. A, p. 15, Ex. C, p. 1, Ex. F, p. 1; Webb Decl., ¶	211.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
7, Ex. H.]	
212. Beginning at 2:19 p.m., Dunn called Det. Koffman numerous times. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex. K, p. 1.]	212.
213. Dunn called Sgt. Webb at 2:25 p.m. and indicated, per Sgt. Duran, that if GD was dealing, CCPD should proceed with its operation. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15, Ex. M, p. 1; Koffman Decl., Ex., K, p. 1; Webb Decl., Ex. G, p. 2.]	213.
214. At 2:46 and 2:48 p.m., Dunn called GD again, this time using his sister's phone. According to the phone records, each of these calls lasted two minutes. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. A, p. 15-16, Ex. D, p. 2-3, Ex. F, p. 1; Koffman Decl., Ex. O, pp. 2-3; Webb Decl.¶ 7, Ex. H.]	214.
215. Dunn's supervisor, Sgt. Duran, told sheriff's investigators that he was surprised that Dunn called GD on March 11, 2007 and could offer no explanation for why he would	215.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
do so. [Lewandowski Decl., Ex. A, p. 8).]	
216. Dunn did not tell anyone at BPD or CCPD that he had spoken with GD on March 11, 2007 or that GD was aware CCPD was coming after her. [Pelletier Decl., Ex. HH, pp. 275:11-276:21; Misquez Decl., Ex. EE, p. 5; Stehr Decl., Ex. U, p. 3.]	216.
217. Immediately following Dunn's calls to her on March 11, 2007, GD telephoned her sister, Nancy Mercado. [Misquez Decl., Ex. W, pp. 1, 3, Lewandowski Decl., Ex. E, p. 1, Koffman Decl., Ex. N, p. 1.]	217.
218. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD told Mercado that: "Chris" had just called, and told her that: a) he was at a picnic; b) a different agency had arrested a subject "in acting or something" who gave up GD; c) the subject had told the other agency that GD had pounds of drugs; d) Dunn told the other agency that GD would not have that quantity of narcotics; and e) the other agency did not care that GD was a BPD informant and was coming after	218.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
her. GD also told Mercado that she knew who the subject was from Dunn's description. [Misquez Decl., Exs, X, Y, pp. 1-4.]	
219. Later that day, at 5:22 p.m., completely unaware that Dunn had called GD, CCPD had JW call GD to attempt a controlled buy. [Koffman Decl., ¶ 7, Ex. N, p. 1; Webb Decl., Ex. G, p. 3; Misquez Decl., Ex. W, pp. 1, 3-4; Lewandowski Decl., Ex. A, p. 13, Ex. E, p. 1.]	219.
220. CCPD Det. Koffman monitored the conversation and reported that JW told GD he had cash and wanted to buy drugs. GD declined to sell JW drugs, saying she was "out." [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3.]	220.
221. According to Det. Koffman, JW was visibly surprised by this reaction, and immediately asked whether GD was aware of the operation. [Koffman Dec., ¶ 7; Lewandowski Decl., Ex. A, pp. 5-6.]	221.
222. According to Det. Koffman, JW told him that it was the first time in his 3-4 years as a customer of GD's that she had not sold	222.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
to him. Koffman also indicated that JW said that GD sounded uncharacteristically cold and flat on the telephone. [Koffman Decl., ¶ 7; Webb Decl., Ex. G, p. 3; Lewandowski Decl., Ex. A, pp. 5-6.]	
223. According to Det. Koffman, he had to reassure JW that no one at CCPD had tipped off GD. [Koffman Decl., ¶ 7; Lewandowski, Decl., Ex. A, pp. 5-6.]	223.
224. CCPD also had to call off its operation given GD's reaction. [Webb Decl., Ex. G, p. 3.]	224.
225. At 5:24 p.m., immediately after JW called her and asked to buy drugs, GD called Dunn. [Misqueze Decl., Ex. W, pp. 1, 4; Lewandowski Decl., Ex. A, p. 16, Ex. B, p. 1, Ex. F, p. 1; Koffman Decl., Ex. K, p. 1.]	225.
226. Dunn would later admit that GD told him that JW had just called her, but Dunn did not inform anyone at BPD or CCPD of this call. [Misqueze Decl., Ex. FF, p. 8; Stehr Decl., Ex. U, p. 10.]	226.
227. GD would later admit to CCPD detectives that she flushed her supply of narcotics following the calls from Dunn and	227.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
JW on March 11, 2007. [Webb Decl., ¶ 8(d), Ex. G, p. 6]	
228. GD called Mercado at 5:29 p.m.. on March 11, 2007. [Misquezt Decl., Ex. W pp. 1, 4; Lewandowski Decl., Ex. E, p. 2; Koffman Decl., Ex. N, p. 2.]	228.
229. In a recorded interview with BPD that took place on April 18, 2007, Mercado told BPD, that during this March 11, 2007 call with GD, GD asked Mercado to run a computer search of the Los Angeles County Sheriff's Department ("LASD") arrest record website, where Mercado pulled up the information regarding JW's arrest and release on March 11, 2007. [Misquezt Decl., Exs., X, Y, pp. 4-6.]	229.
230. Although its attempt at a controlled buy with GD was unsuccessful, CCPD continued its investigation of GD. On Friday, March 16, 2007, CCPD served a warrant at GD's residence, without running her name through LA CLEAR or warning Dunn. [Webb Decl., ¶ 7, Ex. G, p., 3.]	230.
231. According to Sgt. Webb, upon being	231.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>detained on March 16, 2007, GD blurted out "I know it was [JW] that gave me up, I know it's [JW]." And "Yeah, I knew you were with Culver City." [Webb Decl., ¶ 8, Ex. G, p. 3.]</p>	
<p>232. GD was arrested with 71 grams of narcotics, packaging and illegal proceeds from narcotics sales, and a cell phone. The register log for GD's cell phone showed an incoming phone call from "Chris Dunn" at 310-633-1888 at 2:17 p.m. on March 11, 2007 and a second incoming call from "Cris" at 310-339-4967 at 2:49 p.m. on March 11, 2007. [Webb Decl., ¶ 7, Ex. G, p. 3, Ex. H.]</p>	232.
<p>233. Following her arrest on March 16, 2007, GD was interviewed at the CCPD station by Sgt. Webb and Det. Koffman. During that interview (which was videotaped), GD told CCPD that BPD let her deal drugs in order to stay in touch with the dealers she was informing on. [Webb Decl., ¶ 8(a), Ex. G, p. 4.]</p>	233.
<p>234. During her March 16, 2007 interview with CCPD, GD told CCPD that</p>	234.

1	MOVING PARTY'S UNDISPUTED	OPPOSING PARTIES' RESPONSE IN
2	MATERIAL FACT AND SUPPORTING	SUPPORT OF MOTION FOR SUMMARY
3	EVIDENCE	JUDGMENT
4	Dunn called her on Sunday, March 11 to	
5	warn her that another police agency was	
6	looking at her. [Webb Decl., ¶ 8(c), Ex. G,	
7	p. 5, 6, 7-8.]	
8	235. During her March 16, 2007 interview	235.
9	with CCPD , GD told CCPD that Dunn had	
10	previously told her on several occasions that	
11	her name was in a police database, so if	
12	another jurisdiction was looking at her,	
13	Dunn would be notified [Webb Decl., ¶	
14	8(c), Ex. G, p. 5.]	
15	236. During her March 16, 2007 interview	236.
16	with CCPD , GD told CCPD that she called	
17	Dunn on Tuesday or Wednesday (March 13	
18	of March 14) to see if he wanted to monitor	
19	a buy she was planning with a drug dealer	
20	Dunn was targeting, that Dunn told her he	
21	was too tired and to go ahead with the buy	
22	without being monitored, and that the drugs	
23	recovered at her house on March 16 were	
24	what was left from that purchase. [Webb	
25	Decl., ¶ 8(e), Ex. G, pp. 6-7.]	
26	237. After GD's arrest, Det. Koffman	237.
27	made a "ruse" phone call to Dunn and told	
28	him that CCPD was just then preparing to	

1	MOVING PARTY'S UNDISPUTED	OPPOSING PARTIES' RESPONSE IN
2	MATERIAL FACT AND SUPPORTING	SUPPORT OF MOTION FOR SUMMARY
3	EVIDENCE	JUDGMENT
4	serve a warrant on GD. [Webb Decl., Ex. G,	
5	p. 8.]	
6	238. Then Det. Koffman notified LA	238.
7	CLEAR, which also notified Dunn. [Webb	
8	Decl., Ex. G, p. 8.]	
9	239. Following the LA CLEAR	239.
10	notifications, CCPD had GD make a	
11	recorded call to Dunn from her cell phone.	
12	Dunn answered the call and told GD he	
13	would call her back in an hour. [Webb	
14	Decl., Ex. G, p. 8, Ex. J, p. 1.]	
15	240. Seven minutes later, Dunn called back	240.
16	from a "Blocked Number." GD told Dunn	
17	that she had purchased drugs from the dealer	
18	Dunn was targeting and still had "quite a	
19	bit." She also said that she had gotten	
20	another call from JW, and asked if	
21	everything was okay. [Webb Decl., Ex. G,	
22	p. 8-9, Ex. J, p. 1-2.]	
23	241. Dunn told GD, "I don't know those	241.
24	guys, if you have, I don't know what's going	
25	on, you know what I mean. If anything is	
26	going on then you need to be careful."	
27	[Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]	
28	242. The following exchange also took	242.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>place:</p> <p>Dunn: Now if you are dealing dope you can get busted, if you know what I mean. If you are dealing you know you can get busted right... You understand?"</p> <p>GD: Uh oh, in other words, clean up, right?"</p> <p>Dunn: Yes.</p> <p>[Webb Decl., Ex. G, p. 8-9, Ex. J, p. 1-2.]</p>	
<p>243. On March 29, 2007, Dunn notified his supervisor that he had received a call from Mercado, who told him that GD had been arrested and that CCPD was investigating him. [Pelletier Decl., Ex. HH, pp. 326:22-327:19.]</p>	<p>243.</p>
<p>244. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that Dunn's reaction to the information she conveyed to him on March 29, 2007 was to blurt out "Oh my God, oh my God," and to admit that he had called to warn GD, but claimed that doing so was part of his job. [Misqueze Decl., Exs. X-Y, pp. 15-16.]</p>	<p>244.</p>
<p>245. In a recorded interview with BPD on April 18, 2007, Mercado told BPD that,</p>	<p>245.</p>

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
during their March 29, 2007 phone call, Dunn told Mercado to start writing down stuff, to make sure GD got an attorney right away, that GD should stop talking with CCPD, and that he would testify on GD's behalf. [Misquez Decl., Exs., X, Y, pp. 16- 17.]	
246. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misquez Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and ex. 202 thereto.]	246.
247. On March 30, 2007, Dunn was given a direct order not to discuss BPD's investigation with anyone other than his union or legal representatives. [Stehr Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]	247.
248. During his internal affairs interviews, Dunn admitted that he spoke with both GD and Mercado after being given the order not to discuss the investigation, but claimed that, if he did not share details of the investigation, it would not count as a discussion. [Misquez Decl., Ex. EE, p. 6;	248.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Pelletier Decl., Ex. HH, pp. 255:3-259:8.]	
249. Dunn admits that he spoke with and asked questions of GD and her attorney about what they knew related to the investigation. [Pelletier Decl., Ex. HH, pp. 257:22- 258:16.]	249.
250. During her April 18, 2007 interview, Nancy Mercado told BPD that Dunn told her he was not supposed to speak to GD, but that he had called GD at least once and spoke to her anyway. [Misquez Decl., Exs. X, Y, pp. 17-18.]	250.
251. In her April 18, 2007 interview, Nancy Mercado told BPD that she had a long conversation with Dunn, during which he asked if GD had an attorney yet. He also told her that he had been suspended. [Misquez Decl., Ex. X, Y, pp. 17-18.]	251.
252. On April 18, 2007, Dunn was placed on paid administrative leave by the BPD. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and ex. 201 thereto.]	252.
253. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl.,	253.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]	
254. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misqueze Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]	254.
255. In a letter dated May 8, 2007, then- Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]	255.
256. BPD's internal investigation of Dunn was suspended pending the criminal investigation. [Misqueze Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	256.
257. Sgt. Victor Lewandowski of the Los Angeles County Sheriff's Department conducted a criminal investigation of Dunn, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the Los Angeles County District Attorney's Office	257.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	
258. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case was strong and Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	258.
259. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative investigation of Dunn. [Misquezu Decl., Ex. EE, p. 8.]	259.
260. During BPD's internal investigation, multiple witnesses were interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquezu Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	260.
261. BPD's internal affairs investigation of Dunn was completed on March 6, 2008. by Sgt. Gerardo Misquez. Sgt. Misquez	261.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	
262. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]	262.
263. The Brady letter stated that the District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]	263.
264. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]	264.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
265. According to Deputy District Attorney Daniel Baker, this would make Dunn's testimony of no value in a criminal proceeding, as it could be readily impeached. [Baker Decl., ¶ 4.; Stehr Decl., ¶ 7 and Ex. U, pp. 18-20;]	265.
266. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).)]	266.
267. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]	267.
268. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police Officers'	268.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
269. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-7, Exs. JJ- KK.]	269.
270. Dunn never raised any harassment or discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misqueze Decl., ¶ 9.]	270.
271. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed his case, CCPD, LASD, and the District Attorney's office reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	271.
272. Dunn has no evidence that Sgt. Misqueze reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11- 324:8; 325:17-326:3; 329:25-332:16.]	272.
273. Both the person who conducted the	273.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]</p>	
<p>274. Dunn testified at deposition that he heard racial comments from Officer Sam Anderson, Sgt. Dan Yadon, Officer Chris Racina, and Officer Claudio Losaco. [Pelletier Decl., Ex. GG, pp. 134:8- 135:5.]</p>	274.
<p>275. On one occasion, a month or two before April 2007, Dunn says that Officer Sam Anderson at an SRT (Special Response Team) training said, "You're going to be beat like WWII because you know we beat the Japs." [Pelletier Decl., Ex. GG, pp. 130:3-131:7.]</p>	275.
<p>276. Dunn also claimed that Anderson, on more than one occasion used "Jap" or "Nip" in talking about Dunn or his heritage, and used the terms "gooks", "Charlie" or "fish heads" in talking about Asians generally. [Pelletier Decl., Ex. GG, pp. 135:1-137:5.]</p>	276.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
277. Anderson made these alleged comments while working with Dunn on patrol from 2001-2003, while they were on SRT together, and while the two were friendly. [Pelletier Decl., Ex. GG, pp. 130:3-22, 135:16-136:7; Pelletier Decl. Ex. HH, pp. 184:3-185:20.]	277.
278. SRT was an extra assignment in addition to Dunn's regular job at SED or Narcotics, with occasional training sessions [Pelletier Decl., Ex. GG, pp. 19:16-25, 25:14-19, 43:18-22.]	278.
279. Dunn did not report any of Anderson's comments to a supervisor, nor did he say anything about this to Anderson, despite being friendly with him. [Pelletier Decl., Ex. GG, pp. 135:1-4; 137:23-25, Ex. HH, pp. 184:3-185:20.]	279.
280. Dunn also identified two comments made by Sgt. Dan Yadon. According to Dunn, when Yadon was being teased about almost hitting a woman in a crosswalk, Yadon said "Well its not my fault. She's Asian. She could barely see at night." and "Right Dunn. You can see right?" This was	280.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
in 2005 or 2006. [Pelletier Decl., Ex. GG, pp. 157:4-21, 158:10-13).]	
281. Dunn also says that in discussing a Chinese restaurant Sgt., Yadon asked "What you don't like your people's food?" and when told Dunn was Japanese said "Well, its all the same." [Pelletier Decl., Ex. GG, pp. 155:20-156:7.]	281.
282. Dunn additionally said that, on one occasion while Dunn was in SED and before July 2006, Yadon also imitated a famous line—"Me love you long time"—of an Asian character from the movie "Full Metal Jacket" using the Asian character's accent. [Pelletier Decl., Ex. GG, pp. 159:9-24.]	282.
283. Dunn testified that, in 2006, Officer Chris Racina told him, "You know, there's only been three Asian... detectives that worked narcotics. One of them became a transvestite. The other one went insane." Dunn understood that he was the third one. [Pelletier Decl., Ex. GG, pp. 162:8-163:1.]	283.
284. Dunn identified Officer Claudio Losacco as saying in 2003 that he did not like Dunn because he had come over from	284.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
the LAPD. [Pelletier Decl., Ex. GG, pp. 146:19-147:17 and 149:23-150:4]	
285. Dunn also claimed that Officer Losacco mimicked accents of blacks and Armenians, but not of Dunn or Asians generally. [Pelletier Decl., Ex. GG, pp. 150:5-152:6.]	285.
286. All of the race based comments Dunn supposedly heard occurred before he was put on administrative leave on April 17, 2007, over two years before he filed his DFEH Charge. [Pelletier Decl., Ex. GG, p. 129:4-24).]	286.
287. Dunn never made any complaints against any BPD officer due to their racial comments. [Pelletier Decl., Ex. B, pp. 194:11-17, 197:6- 198:4, 203:23- 204:20, 206:3-13).]	287.
288. Dunn says that on one occasion he raised with Sgt. Murphy a dispute between Dunn and Sgt. Yadon about workload and sharing of duties among team members, without raising racial concerns. [Pelletier Decl., Ex. GG, pp. 139:10-142:10.]	288.
289. Dunn never raised any harassment or	289.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
discrimination claims during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	
290. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4- 69:24, and ex. 203(B) thereto.]	290.
291. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	291.
292. Dunn filed this action on July 16, 2009. [FAC, p. 1.]	292.
ISSUE 5—There is no dispute of material fact that the City is entitled to judgment on the sixth cause of action for Violations of the Public Safety Officers Procedural Bill of Rights Act because plaintiff cannot present a triable issue of material fact showing a violation of any of his rights under that Act, or produce a timely government claim asserting these alleged facts or legal theory.	
293. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).]	293.
294. Dunn was terminated because, among	294.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Stehr Decl., Ex. U, pp. 12-19.]	
295. Dunn never raised any harassment or discrimination issues during his investigation or termination. [Stehr Decl., ¶ 8, Ex. U, pp. 20-21; Misquez Decl., ¶ 9.]	295.
296. At his deposition, Dunn admitted that he has no information that any of the outside agencies who reviewed the case, CCPD, LASD, or the District Attorney reached their conclusions based on his race. [Pelletier Decl., Ex. HH, pp. 309:6-310:10.]	296.
297. Dunn has no evidence that Sgt. Misquez reached the conclusions set forth in his internal affairs report based on Dunn's race. [Pelletier Decl., Ex. HH, pp. 311:11-324:8; 325:17-326:3; 329:25-332:16.]	297.
298. Both the person who conducted the	298.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>investigation of Dunn (Sgt. Misquez) and the person who made the decision to terminate him (Chief Stehr) did not have any knowledge of any complaint of discrimination, retaliation or harassment by Dunn. [Stehr Decl., ¶ 8; Misquez Decl., ¶ 9.]</p>	
<p>299. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B) thereto.]</p>	299.
<p>300. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]</p>	300.
<p>301. Dunn filed this action on July 16, 2009. [FAC, p. 1.]</p>	301.
<p>302. Neither Dunn's tort claim nor his DFEH claim make any mention of any claim under POBRA. Nor do they allege any facts that constitute a violation of POBRA. FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B)</p>	302.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
thereto and Ex. GG, pp. 70:11- 71:8.]	
303. Dunn's written discovery responses state that he has "no information or belief" of any "other practices" in violation of POBRA besides retaliation. [Pelletier Decl., Ex. LL (Spec. Rog. Resp. No. 106).]	303.
ISSUE 6—The City is entitled to summary adjudication in its favor on one or more causes of action pursuant to its eighteenth affirmative defense of the statute of limitations.	
304. On April 18, 2007, after interviewing Mercado and receiving independent corroboration that Dunn had warned GD of CCPD's investigation, Dunn was placed on paid administrative leave while the investigation continued. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9- 60:6 and ex. 201 thereto.]	304.
305. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]	305.
306. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging	306.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
receipt).]	
307. Dunn filed a charge with the Dept. of Fair Employment and Housing ("DFEH") on May 27, 2009. [FAC ¶ 19, and ex. B thereto; Pelletier Decl., Ex. GG, pp. 67:4-69:24, and ex. 203(B) thereto.]	307.
308. Dunn filed his government tort claim with the City on May 28, 2009. [FAC ¶ 19, and ex. B thereto (indicates hand delivery and stamped received on May 28, 2009); Pelletier Decl., Ex. GG, pp. 70:11- 71:8.]	308.
309. Dunn filed this action on July 16, 2009. [FAC, p. 1.]	309.
ISSUE 7—The City is entitled to summary adjudication in its favor on one or more causes of action pursuant to its eleventh affirmative defense of failure to exhaust administrative remedies.	
310. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).]	310.
311. Following his termination, Dunn commenced an internal administrative appeal, pursuant to the Memorandum of Understanding between the City of Burbank and the Burbank Police Officers'	311.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
Association ("MOU"). [Pelletier Decl., ¶¶ 4-5, Ex. II.]	
312. An arbitrator was selected and dates picked for the hearing. The City engaged counsel who prepared for the hearing, but, on July 15, 2009, Dunn cancelled the hearing and abandoned his internal appeal, giving only a few day's notice. [Pelletier Decl., ¶ 4-6, Exs. JJ-KK.]	312.
313.	313.
<u>ISSUE 8</u>—The City is entitled to summary adjudication in its favor on one or more causes of action actions pursuant to its nineteenth affirmative defense of privileges and immunities.	
314. On March 30, 2007, Dunn was transferred to Juvenile Division while his possible misconduct was investigated by BPD. [Stehr Decl., ¶¶ 3- 4, Ex. O; Misquez Decl., Ex. EE p. 6; Pelletier Decl., Ex. GG, pp. 65:6- 66:18, and ex. 202 thereto.]	314.
315. On March 30, 2007, Dunn was given a direct order not to discuss the investigation with anyone other than his union or legal representatives. [Stehr Decl., ¶ 3; Misquez Decl., Ex. EE, p. 6.]	315.
316. On April 18, 2007, after interviewing	316.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
<p>Mercado and receiving independent corroboration that Dunn had warned GD of CCPD's investigation, Dunn was placed on paid administrative leave while the investigation continued. [Stehr Decl., ¶ 4, Ex. P; Pelletier Decl., Ex. GG, pp. 59:9-60:6 and ex. 201 thereto.]</p>	
<p>317. April 18, 2007 was the last day Dunn physically worked at a BPD facility or in a BPD work environment. [Pelletier Decl., Ex. GG, pp. 59:9- 64:22 and ex. 201 thereto; Stehr Decl., ¶ 4, Ex. P.]</p>	317.
<p>318. BPD's preliminary investigation revealed that Dunn may have engaged in illegal conduct. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., ¶ 4.]</p>	318.
<p>319. Therefore, in a letter dated May 8, 2007, then-Burbank Police Chief Thomas Hoefel asked LA County Sheriff Lee Baca, on behalf of BPD and CCPD Chief Don Pedersen, to conduct a criminal investigation into whether Dunn had warned GD about CCPD's investigation of her. [Stehr Decl., ¶ 4, Ex. Q.]</p>	319.
<p>320. BPD's internal investigation of Dunn</p>	320.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
was suspended pending the criminal investigation. [Misquez Decl., Ex. EE, p. 7; Stehr Decl., Ex. U, p. 5.]	
321. Sgt. Victor Lewandowski of the LASD conducted the criminal investigation, concluded that there was probable cause to believe Dunn had tipped GD and committed a crime, and presented the case to the District Attorney's Office for filing consideration on July 6, 2007 . [Lewandowski Decl., Ex. A, ¶¶ 2-3.]	321.
322. Daniel Baker, the Deputy District Attorney assigned to the matter, felt that the case against Dunn was strong and Dunn's conduct was egregious, but declined to prosecute Dunn because of the privileges applicable to GD and JW as informants. [Baker Decl., ¶¶ 2-3.]	322.
323. Shortly after the District Attorney advised BPD that he had declined to prosecute, BPD resumed its administrative investigation of Dunn. [Misquez Decl., Ex. EE, p. 8).]	323.
324. During BPD's internal affairs investigation, multiple witnesses were	324.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
interviewed and numerous documents reviewed, including the LASD's criminal investigation and the phone records of Dunn, his family members, GD, CCPD and BPD personnel. Dunn was interviewed by internal affairs on December 18 and 27, 2007. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	
325. BPD's internal affairs investigation of Dunn was completed on March 6, 2008, by Sgt. Gerardo Misquez. Sgt. Misquez concluded that, among other things, Dunn had tipped GD to CCPD's investigation and in so doing violated California <i>Penal Code</i> § 148(a)(1), had been untruthful when asked about this during the internal affairs investigation, and had violated a direct order not to discuss the investigation. [Misquez Decl., ¶¶ 2-10, Ex. EE, pp. 8-12.]	325.
326. On May 9, 2008, the Los Angeles County District Attorney's Office issued a "Brady letter" to then-BPD Police Chief Tim Stehr regarding Dunn. [Stehr Decl., ¶ 7, Ex. T.]	326.
327. The Brady letter stated that the	327.

MOVING PARTY'S UNDISPUTED MATERIAL FACT AND SUPPORTING EVIDENCE	OPPOSING PARTIES' RESPONSE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
District Attorney had determined that Dunn's conduct on and after March 11, 2007 constituted "an obstruction of justice, an act involving moral turpitude." [Stehr Decl., ¶ 7, Ex. T.]	
328. The letter went on to state that, in both pending and closed cases involving Dunn, the defense would have to be notified that Dunn had tipped GD off to a pending criminal investigation of her by the CCPD. [Stehr Decl., ¶ 7, Ex. T.]	328.
329. According to Deputy District Attorney Baker, this would make Dunn's testimony of no value in a criminal proceeding, as his testimony could be readily impeached. [Stehr Decl., ¶ 7 and Ex. U, pp. 18-20; Baker Decl., ¶ 4.]	329.
330. Dunn was terminated from the BPD on August 27, 2008. [FAC ¶ 18; (Stehr Decl., ¶ 8, Ex. U, p. 21-22 (acknowledging receipt).]	330.
331. Dunn was terminated because, among other things cited in his Notice of Termination, Dunn had tipped GD to CCPD's investigation and in so doing	331.

1 MOVING PARTY'S UNDISPUTED
2 MATERIAL FACT AND SUPPORTING
3 EVIDENCE

OPPOSING PARTIES' RESPONSE IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

4 violated California *Penal Code* § 148(a)(1),
5 had been untruthful when asked about this
6 during the internal affairs investigation, and
7 had violated a direct order not to discuss the
8 investigation. [Stehr Decl., Ex. U, pp. 12-
9 19.]

10 Dated: December 17, 2010

Burke, Williams & Sorensen, LLP
Kristin A. Pelletier

11
12
13 By: 

14 Kristin A. Pelletier
15 Attorneys for Defendant
16 City of Burbank
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PROOF OF SERVICE BY MAIL

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 444 South Flower Street, Suite 2400, Los Angeles, California 90071-2953. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On December 17, 2010, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**THE CITY OF BURBANK'S CORRECTED SEPARATE
STATEMENT IN SUPPORT OF DEFENDANT CITY OF
BURBANK'S MOTION FOR SUMMARY JUDGMENT, OR IN
THE ALTERNATIVE, SUMMARY ADJUDICATION**

in a sealed envelope, postage fully paid, addressed as follows:

Carol A. Humiston, Esq.
Senior Assistant Attorney
Office of the City Attorney
275 East Olive Avenue
Burbank, CA 91510-6459
Fax: (818) 238-5724

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 17, 2010, at Los Angeles, California.

ALICE CHEUNG

PROOF OF SERVICE BY PERSONAL DELIVERY

I am employed in the County of Los Angeles, State of California and am over the age of 18 and not a party to the within action. My business address is 1511 W. Beverly Blvd., Los Angeles, CA 90026. On December 17, 2010, I personally served the following document described as:

**THE CITY OF BURBANK'S CORRECTED SEPARATE
STATEMENT IN SUPPORT OF DEFENDANT CITY OF
BURBANK'S MOTION FOR SUMMARY JUDGMENT, OR IN THE
ALTERNATIVE, SUMMARY ADJUDICATION**

by delivering copies thereof to:

Solomon E. Gresen, Esq.
Law Offices of Rheuban & Gresen
15910 Ventura Boulevard, Suite 1610
Encino, CA 91436

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 17, 2010, at Los Angeles, California.